

**IN THE UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF MISSISSIPPI
NORTHERN DIVISION**

VICKIE B. CUMMINS

PLAINTIFF

Vs.

CASE NO. 3:15-CV-74-DPJ-FKB

**NEELY & NEELY TRUCKING, INC.
AND ROY W. NEELY, JR. INDIVDUALY**

DEFENDANTS

**DEFENSES AND ANSWER OF NEELY & NEELY TRUCKING, INC.
AND ROY W. NEELY, JR. INDIVIDUALLY TO FIRST AMENDED COMPLAINT**

COME NOW, NEELY & NEELY TRUCKING, INC. and ROY W. NEELY, JR., INDIVIDUALLY, by and through undersigned counsel, and file this their Defenses and Answer to First Amended Complaint.

FIRST DEFENSE

The Complaint fails to state a claim upon which relief can be granted and should therefore be dismissed, for which responding Defendants so move.

SECOND DEFENSE

Defendants Neely & Neely Trucking, Inc. and Roy W. Neely, Jr., Individually were not involved as an enterprise during the times complained of herein, as the term enterprise is defined by the Fair Labor Standards Act, 29 U.S.C. § 201, *et seq.*

THIRD DEFENSE

Defendants Neely & Neely Trucking, Inc. and Roy Neely, Jr., individually, complied with the requirements of the Fair Labor Standards Act, 29 U.S.C. § 201, *et seq.*

**FOURTH
DEFENSE**

Though Defendants expressly deny any such violation occurred, any such violation

was not willful.

FIFTH DEFENSE

The actions of Defendants Neely & Neely Trucking, Inc. and Roy W. Neely individually were taken in good faith and with reasonable belief that Defendants were not violating Fair Labor Standards Act, 29 U.S.C. § 201, *et seq.*

SIXTH DEFENSE

The job activities of Plaintiff did not amount to being engaged in commerce while employed by responding Defendants, as *commerce* is defined by the Fair Labor Standards Act, 29 U.S.C. §201, *et seq.*

SEVENTH DEFENSE

ANSWER

1.

The allegations of paragraph 1 are admitted.

2.

The allegations of paragraph 2 are admitted.

3.

The allegations of paragraph 3 are admitted.

4.

The allegations of paragraph 4 are denied.

5.

The allegations of paragraph 5 are denied.

6.

The allegations of paragraph 6 are denied.

7.

The allegations of paragraph 7 are admitted.

8.

The allegations of paragraph 8 are admitted.

9.

The allegations of paragraph 9 are denied.

10.

The allegations of paragraph 10 are denied

11.

The allegations of paragraph 11 are denied.

12.

The allegations of paragraph 12 are denied.

13.

The allegations of paragraph 13 are denied.

14.

The allegations of paragraph 14 are denied.

15.

The allegations of paragraph 15 are denied.

16.

The allegations of paragraph 16 are denied.

17.

The allegations of paragraph 17 are denied.

18.

The allegations of paragraph 18 are denied.

19.

The allegations of numbered paragraph 19 are denied.

20.

The allegations of numbered paragraph 20 are denied.

21.

The allegations of numbered paragraph 21 are denied.

22.

The allegations of numbered paragraph 22 are denied.

23.

The allegations in paragraph 23 are denied.

24.

The allegations of paragraph 24 are denied.

25.

The allegations of paragraph 25 are denied.

26.

The allegations of paragraph 26 are denied.

27.

The allegations of paragraph 27 are denied.

28.

The allegations of paragraph 28 are denied.

29.

The allegations in paragraph 29 are denied.

30.

The allegations in paragraph 30 are denied.

31.

The allegations in paragraph 31 are denied

32.

The allegations of paragraph 32 are denied.

33.

The allegations of paragraph 33 are denied.

34.

The allegations of paragraph 34 are denied.

35.

The allegations of paragraph 35 are denied.

36.

The allegations of paragraph 36 are denied.

37.

The allegations of unnumbered paragraph 37 are denied.

38.

Any allegation of the Complaint that is not herein expressly admitted is hereby denied.

Respectfully submitted,

NEELY & NEELY TRUCKING, INC. AND
ROY W. NEELY, JR., INDIVIDUALLY

BY: **Katrina M. Gibbs**

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CERTIFICATE OF SERVICE

I, the undersigned, and attorney of record for Neely & Neely Trucking, Inc. and Roy W. Neely, Jr., individually, do hereby certify that I have electronically filed the above and foregoing Defenses and Answer to the First Amended Complaint via the ECF system, which gave notification of such filing to all counsel of record, including:

Louis H. Watson, Jr.

Nick Norris

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This 9th day of July, 2015.

Katrina M. Gibbs
KATRINA M. GIBBS, ESQ.